

BRB No. 01-0670

RUDOLPH KAZIMER)	
)	
Claimant-Respondent)	
)	
v.)	
)	
CONSOLIDATION COAL COMPANY)	DATE ISSUED: <u>May 6, 2002</u>
)	
Self-Insured)	
Employer-Petitioner)	DECISION and ORDER

Appeal of the Supplemental Decision and Order Granting Attorney's Fees of Gerald M. Tierney, Administrative Law Judge, United States Department of Labor.

Stephen P. Moschetta (Joseph P. Moschetta and Associates), Washington, Pennsylvania, for claimant.

Michael W. Zimecki (Strassburger McKenna Gutnik & Potter, P.A.), Pittsburgh, Pennsylvania, for self-insured employer.

Before: DOLDER, Chief Administrative Appeals Judge, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Supplemental Decision and Order Granting Attorney's Fees (97-LHC-1483) of Administrative Law Judge Gerald M. Tierney rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). The amount of an attorney's fee award is discretionary and will not be set aside unless shown by the challenging party to be arbitrary, capricious, an abuse of discretion or not in accordance with the law. *See, e.g., Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant, on October 25, 1994, injured his neck and back when he fell 12 feet from one coal barge into another coal barge while working for employer as a dockman/riverman. In his initial Decision and Order, the administrative law judge awarded claimant permanent total disability benefits from March 1997 and continuing as well as medical benefits pursuant to Section 7 of the Act, 33 U.S.C. §907, including the chiropractic care provided by Dr. Wilhelm. On appeal, the Board affirmed the administrative law judge's award of compensation but vacated the

administrative law judge's award of chiropractic expenses and remanded the case for the administrative law judge to determine if these expenses were compensable in accordance with Section 702.404 of the Act's implementing regulations, 20 C.F.R. §702.404. *Kazimer v. Consolidation Coal Co.*, BRB No. 99-0155 (Sept. 28, 1999) (unpub.).

In his Decision and Order on Remand, the administrative law judge determined that claimant's chiropractic expenses were compensable by employer. Claimant's counsel subsequently filed a fee petition with the administrative law judge, seeking a fee of \$3,185, representing 3.7 hours of services rendered by lead counsel at an hourly rate of \$200, and 16.3 hours of services rendered by a junior attorney at an hourly rate of \$150. Employer filed objections to the proposed fee, contending that hourly rates of \$175 and \$125 respectively were more appropriate for the Western Pennsylvania area wherein this case arose. In his Supplemental Decision and Order Awarding Attorney's Fees, the administrative law judge rejected employer's contentions, noting the nature of the issues involved, the degree of skill demonstrated and the amount of time and work involved as well as other relevant factors, and he accordingly awarded the fee requested by counsel in its entirety.

Employer now appeals, arguing that the hourly rates awarded by the administrative law judge are neither reasonable nor customary in the geographic area in which this case arises. Claimant responds, urging affirmance.

It is well-established that the administrative law judge has broad discretion in his award of an attorney's fee and the party challenging the reasonableness of an attorney's fee award bears the burden of showing that the award is contrary to law or was arbitrary and capricious, or an abuse of discretion. *See generally Forlong v. American Security & Trust Co.*, 21 BRBS 155 (1988). It is the administrative law judge's responsibility to review the fee petition and determine whether the fee requested is reasonably commensurate with the necessary work done. *Bazor v. Boomtown Belle Casino*, 35 BRBS 121 (2001).

In the present case, the administrative law judge specifically addressed employer's concerns regarding the hourly rates sought by claimant's counsel; in this regard, the administrative law judge found the requested rates to be consistent with the experience of the firm, the complexity of this particular case, including the benefits awarded, and rates in the general geographic area. Pursuant to these findings, the administrative law judge concluded that the requested rates are reasonably commensurate with the work done and necessary for the successful prosecution of the instant claim. In support of its contention that the hourly rates awarded should be reduced, employer has presented excerpts from *The 2000*

Survey of Law Firm Economics which determined that the median hourly rate for firms the size of claimant's attorney's is \$175 and \$125 respectively for senior and junior attorneys. This document, however, provides an insufficient basis for overturning the fee as the administrative law judge properly determined the appropriate rates after consideration of the regulatory criteria, 20 C.F.R. §702.132. See *Ferguson v. Southern States Cooperative*, 27 BRBS 16 (1993); 20 C.F.R. §702.132. Moreover, employer's mere assertion that the awarded hourly rates do not conform to the reasonable and customary charges in the area where this claim arose does not satisfy its burden of proving that the awarded hourly rates should be overturned. See generally *Mijangos v. Avondale Shipyards, Inc.*, 19 BRBS 15 (1986). Accordingly, inasmuch as the administrative law judge considered the regulatory factors of Section 702.132 in determining the appropriate rates, and employer has not met its burden of showing that his findings are unreasonable, the hourly rates awarded to counsel by the administrative law judge are affirmed. See *Parks v. Newport News Shipbuilding & Dry Dock Co.*, 32 BRBS 90 (1998), *aff'd mem.* 202 F.3d 259 (4th Cir. 1999)(table).

Accordingly the administrative law judge's Supplemental Decision and Order Granting Attorney's Fees is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge